

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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JORDAN FLEMING BLOCHER,

Plaintiff,

v.

MINDGEEK USA INC.,

Defendant.

Case No. 3:23-CV-00209-MMD-CLB

**ORDER GRANTING MINDGEEK'S
MOTION TO STAY DISCOVERY AND
DENYING AS MOOT BLOCHER'S
MOTION TO DETERMINE DISCOVERY
PLAN**

[ECF Nos. 18, 30]

Currently pending before the Court is Defendant MindGeek USA, Inc.'s ("MindGeek") motion to stay discovery. (ECF No. 18.) Plaintiff Jordan Fleming Blocher ("Blocher") filed a response, (ECF No. 27), and MindGeek replied. (ECF No. 29.) Also pending before the Court is Blocher's motion to determine discovery plan. (ECF No. 30.) The Court has reviewed the relevant pleadings and papers, and, for the reasons set for below, grants MindGeek's motion to stay discovery and denies Blocher's motion to determine discovery plan as moot.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Blocher's complaint alleges the following. In 2018, Blocher's then-boyfriend recorded sexually explicit videos of her and uploaded them to "content sites for profit." (ECF No. 1-1 at 7.) Blocher later discovered the videos on "pornhub" ("Pornhub"). (*Id.*) In 2020, Blocher was tortured in her home from late April to mid-June by being repeatedly drugged and raped. (*Id.* at 7-8.) These events were videotaped and were released online in 2022. (*Id.* at 8.) Blocher's current boyfriend took additional sexually explicit videos of her which were also released online. (*Id.* at 8-9.) Blocher alleges the "negligence of MindGeek is clear" and asks for damages of \$64,000,000. (*Id.* at 9, 14.) MindGeek claims it does not own or operate Pornhub, the website referenced by Blocher. (ECF No. 6 at 4.) In the complaint, Blocher does not explain the connection between MindGeek and Pornhub.

1 In response to the complaint, MindGeek filed a motion to dismiss the case for
2 failure to state a claim upon which relief may be granted. (ECF No. 6.) Thereafter,
3 MindGeek filed the instant motion to stay discovery arguing discovery should be stayed
4 because: (1) the pending motion to dismiss is dispositive of the entire case; (2) no
5 discovery is required to rule on the motion to dismiss; and (3) there is good cause for a
6 stay. (ECF No. 18.)

7 Blocher opposed the motion to stay and requests that discovery be allowed. (ECF
8 No. 27.) Blocher reiterates portions of her complaint and adds allegations that the
9 accounts in question violate multiple Nevada statutes. (*Id.* at 2-3.) Blocher also argues
10 MindGeek did not address her allegations of gross negligence. (*Id.* at 1-2.) MindGeek
11 filed a brief reply on July 31, 2023. (ECF No. 29.) MindGeek argues Blocher's response
12 does not dispute that the motion to dismiss is potentially dispositive or that discovery is
13 unnecessary for the Court to decide the motion. (*Id.* at 1.) MindGeek reiterated that it
14 "should not be required to engage in discovery when Plaintiff has not, and may never, set
15 forth any coherent claims." (*Id.* at 2.) On August 2, 2023, Blocher also filed a motion to
16 determine discovery plan. (ECF No. 30.)

17 **II. LEGAL STANDARD**

18 To determine if a stay is appropriate pending the ruling on a motion to dismiss, a
19 court must consider the following factors: (1) whether the pending motion is potentially
20 dispositive of the case; (2) whether the motion can be decided without additional
21 discovery; and (3) whether the court is convinced that the plaintiff cannot state a claim for
22 relief. *Kor Media Group, LLC v. Green*, 294 F.R.D. 579, 581 (D. Nev. 2013). The court
23 must take a "preliminary peek" at the merits of the underlying dispositive motion in order
24 to find whether the plaintiff can state a claim. *Tradebay, LLC v. eBay, Inc.*, 278 F.R.D.
25 597, 603 (D. Nev. 2011). The "preliminary peek" does not prejudge the outcome of the
26 motion; it merely evaluates whether an order staying discovery is warranted. *Id.*

27 In conducting its review, the court also considers the goal of Federal Rule of Civil
28 Procedure 1, which provides that the Rules should "be construed, administered, and

1 employed by the court and the parties to secure the just, speedy, and inexpensive
2 determination of every action.” Fed. R. Civ. P. 1. With Rule 1 as its prime directive, the
3 court must decide whether it is more just to speed the parties along in discovery while a
4 dispositive motion is pending or to delay discovery to accomplish the inexpensive
5 determination of the case. See *Big City Dynasty v. FP Holdings, L.P.*, 336 F.R.D. 507,
6 512 (D. Nev. 2020).

7 **III. DISCUSSION**

8 **A. MindGeek’s Motion to Dismiss is Dispositive**

9 The Court must first determine whether MindGeek’s motion to dismiss is potentially
10 dispositive. *Kor Media Group, LLC.*, 294 F.R.D. at 581. Here, MindGeek’s motion to
11 dismiss argues that Blocher has failed to state a claim upon which relief can be granted.
12 (ECF No. 6 at 1-6.) MindGeek argues Blocher falls well short of stating any plausible claim
13 because the complaint contains almost no allegations related to MindGeek, and none of
14 the claims asserted would give rise to any recovery if proven. (*Id.* at 2.) MindGeek further
15 argues that even if Plaintiff had adequately pleaded any viable claim, that claim would in
16 turn be barred by Section 230 of the Communications Decency Act (“Section 230”), which
17 affords a provider of an interactive computer service provider (“ICS”) broad immunity from
18 liability for content posted to its websites by third parties. 47 U.S.C. § 230(c)(1).

19 If the motion to dismiss is granted, it appears all of the claims asserted in the
20 complaint would likely be subject to dismissal for failure to state a claim upon which relief
21 may be granted. Therefore, the Court finds Defendants’ motions to dismiss are potentially
22 dispositive.

23 **B. No Discovery is Needed to Decide the Motion to Dismiss**

24 Next, the Court must determine whether additional discovery is necessary for a
25 ruling on the motion to dismiss. *Kor Media Group, LLC.*, 294 F.R.D. at 581. MindGeek
26 argues that no discovery is necessary because the motion to dismiss deals purely with
27 questions of law. (ECF No. 18 at 3.) The Court agrees with MindGeek’s description of the
28 issues in the motion to dismiss: “whether Plaintiff has pleaded a recognized claim, and

whether Defendant is immune from liability under Section 230.” (*Id.* (citing 47 U.S.C. § 230).) Whether Blocher sufficiently pled her claims requires a legal determination of whether she met the standard of a “short and plain statement of [any] claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2); *Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009). Liability under Section 230 also is a pure question of law, as it requires determination of whether the defendant is “(1) a provider or user of an interactive computer service (2) whom a plaintiff seeks to treat, under a state law cause of action, as a publisher or speaker (3) of information provided by another information content provider.” *Dyroff v. Ultimate Software Grp., Inc.*, 934 F.3d 1093, 1097 (9th Cir. 2019); see also *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1100 (9th Cir. 2009). Where the motion to dismiss concerns questions of law, additional discovery is not required. *Segal v. Lefebvre*, 2013 WL 12130553, *2 (D. Nev. Nov. 14, 2013). Therefore, as MindGeek’s motion to dismiss concerns only questions of law, no discovery is required to rule on the motion to dismiss. *Id.*

C. The Court is Convinced the Motion to Dismiss is Likely to be Granted

Finally, the Court must conduct a “preliminary peek” of the motions to determine whether as stay is warranted. *Tradebay*, 278 F.R.D. at 603. In conducting this preliminary peek, it is the Court’s duty is to ensure an inexpensive determination of this action, and delaying discovery would prevent economic waste, since conducting discovery before the ruling on the motions to dismiss would be futile. Fed. R. Civ. P. 1; see *Big City Dynasty*, 336 F.R.D. at 512. Having conducted this preliminary peek, the Court finds a stay is warranted.

Construed broadly, Blocher’s complaint alleges a negligence claim, violations of California Penal Code Sections 647(j)(4), 261, 286, 236.1, 289, and 264.1, and a violation of the Thirteenth Amendment. (ECF No. 1-1.) MindGeek’s motion to dismiss argues Blocher’s claims must be dismissed because Blocher: (1) failed to state a claim for negligence; (2) has not alleged that MindGeek violated any section of the California Penal Code; (3) has not alleged MindGeek violated the Thirteenth Amendment of the

1 Constitution; and (4) brings claims that are barred by Section 230 of the Communications
 2 Decency Act (47 U.S.C. § 230) (“Section 230”). (ECF No. 6.) MindGeek argues “[a]part
 3 from the conclusory statement at the end of the Complaint’s fact section that ‘the
 4 negligence of MindGeek is clear,’ and one passing reference to ‘pornhub,’ the Complaint
 5 does not include any factual allegations remotely related to Defendant, let alone
 6 allegations of wrongdoing.” (*Id.* at 3 (quoting ECF No. 1-1 at 7, 9).)

7 Blocher opposed the motion to dismiss, arguing: (1) there had been no judgment
 8 in the Nevada State Court from which this case was removed;¹ (2) the complaint received
 9 by MindGeek was not the final copy and was served despite Blocher attempting to stop
 10 the process server; (3) Blocher requested a stay in the state court and asks for one in the
 11 federal court; (4) Blocher does not feel as if she is being heard and that her complaint is
 12 being misunderstood by MindGeek; and (5) Blocher continues to fight a serious medical
 13 condition as well as homelessness. (ECF No. 16.)

14 MindGeek replied, arguing Blocher’s opposition did not contain any law or facts in
 15 opposition to the motion to dismiss and reiterated that the complaint does not set forth
 16 “‘sufficient factual matter, accepted as true, to state a claim to relief that is plausible on
 17 its face.’ *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).” (ECF No. 17.)

18 **1. Negligence Claim**

19 First, MindGeek’s motion to dismiss argues Blocher’s complaint should be
 20 dismissed for failure to state a claim upon which relief may be granted or, in the
 21 alternative, dismissed because MindGeek is immune from liability under Section 230 of
 22 the Communications Decency Act. (ECF No. 6.) First, MindGeek argues Blocher fails to

23
 24 ¹ Here, given Blocher’s status as a *pro se* party, a brief explanation of removal would
 25 be helpful. Removal gives a defendant who has been sued in a state court the right to
 26 “remove,” or in other words to transfer, the case to federal court from the state court
 27 originally selected by the plaintiff. 4 Charles Alan Wright & Arthur R. Miller, Federal
 28 Practice and Procedure § 3721 (Rev. 4th ed.). Once an action is removed to federal court,
 the federal district court acquires full and exclusive subject-matter jurisdiction over the
 litigation and the case will proceed as if it originally had been brought in the federal court.
Id. at § 3738. Therefore, no judgment in the Nevada State Court will be entered because
 the entirety of the case has been removed to Federal District Court.

1 state a sufficient claim for negligence. (ECF No. 6 at 3-4.) MindGeek argues that Blocher
 2 has not adequately plead any of the required elements for negligence: “(1) [D]efendant[]
 3 owed ... a duty of care; (2) [D]efendant[] breached that duty; (3) this breach was the actual
 4 cause of [the] injury; (4) the breach was the proximate cause of [the] injury; and (5)
 5 [P]laintiff suffered damages.” *Wesco Ins. Co. v. Smart Indus. Corp.*, 2018 WL 3447171,
 6 at *3 (D. Nev. Jul. 17, 2018) (citing *Scialabba v. Brandise Const. Co., Inc.*, 112 Nev. 965,
 7 967, 921 (Nev. 1996)); see also *Garcia-Garrido v. Outback Steakhouse of Florida, LLC*,
 8 2018 WL 2434062, at *4 (D. Nev. May 30, 2018). Blocher’s only reference to negligence
 9 in her complaint is a conclusory statement that the “negligence of MindGeek is clear.”
 10 (ECF No. 1-1 at 9.) This is clearly insufficient to satisfy the required elements for
 11 negligence. Therefore, the Court is convinced the motion to dismiss will be granted as to
 12 the negligence claim.

13 **2. California Penal Code**

14 Next, MindGeek argues Blocher failed to allege MindGeek violated any section of
 15 the California Penal Code. (ECF No. 6 at 5.) MindGeek points out that, as an initial matter,
 16 it is unlikely any of these laws are applicable because the complaint alleges that the
 17 events detailed took place in Nevada. (*Id.*) Additionally, MindGeek argues that for all but
 18 one of these statutes, it is unclear how MindGeek supposedly violated the criminal
 19 provisions which require actions by a person because MindGeek is a corporation, not a
 20 human being. (*Id.*) The remaining California statute, California Penal Code § 647(j)(4),
 21 criminalizes the unauthorized intentional distribution of images of intimate body parts of
 22 another. MindGeek argues Blocher at most alleges that third parties, not MindGeek,
 23 uploaded the videos or released them online. (*Id.*) Additionally, the complaint contains no
 24 allegation that it obtained any videos unlawfully or with the understanding that MindGeek,
 25 as opposed to third parties, would keep those videos private as the statute requires. (*Id.*)
 26 As the applicability of the California statutes to events which occurred in Nevada is
 27 questionable at best, the Court is fairly convinced that the motion to dismiss will be
 28 granted as to the alleged violations of California statutes. Additionally, the Court is fairly

1 confident the motion to dismiss will be granted as Blocher has not alleged sufficient claims
2 of violations of the specified statutes by MindGeek itself.

3 **3. Thirteenth Amendment**

4 MindGeek next argues that Blocher has not actually alleged it violated the
5 Thirteenth Amendment. (ECF No. 6 at 5-6.) The final section of Blocher's complaint states
6 "because of the reasons stated here, court cases CV20-0083, CV-23-0077, and all the
7 pleadings and papers on file in this case; the attached exhibits hereto, if any; and the
8 argument that the actions of MindGeek USA Incorporated have violated the 13th
9 Amendment, if allowed to argue at the time of hearing." (ECF No. 1-1 at 14.) MindGeek
10 argues "to the extent Plaintiff is seeking to pursue a claim directly under the Constitution
11 or an equivalent common law provision, those claims again fail because she has not
12 pleaded the existence of any actions taken by Defendant, let alone actions that could
13 support a claim of involuntary servitude." (ECF No. 6 at 6.) The Court agrees with
14 MindGeek that "[i]t is unclear what wrongdoing is being alleged or relief sought from this
15 language." (*Id.*) Therefore, the Court finds that MindGeek is likely to succeed on its
16 argument that Blocher fails to state a claim upon which relief may be granted as to the
17 Thirteenth Amendment.

18 **4. Section 230**

19 Finally, MindGeek argues Blocher's complaint should be dismissed with prejudice
20 because "[e]ven if Plaintiff were to amend her Complaint to set forth some substantive
21 claim against the entity that operates Pornhub, claims premised on the upload of content
22 created by third parties are barred by Section 230 of the Communications Decency Act.
23 47 U.S.C. § 230." (ECF No. 6 at 6.) MindGeek explains that "websites cannot be held
24 liable as the publishers of user-generated content like the videos Plaintiff alleges were
25 uploaded to Pornhub. [] Thus, because Plaintiff seeks to hold Defendant liable for third-
26 party content posted to Pornhub, her claims are proscribed by Section 230." (*Id.* (citing
27 *Caraccioli v. Facebook, Inc.*, 167 F.Supp.3d 1056, 1067 (N.D. Cal. 2016), *aff'd*, 700 F.
28 App'x 588 (9th Cir. 2017).) To be entitled to immunity under Section 230, the defendant

1 must be “(1) a provider or user of an interactive computer service (2) whom a plaintiff
2 seeks to treat, under a state law cause of action, as a publisher or speaker (3) of
3 information provided by another information content provider.” *Dyroff*, 934 F.3d at 1097;
4 *see also Barnes*, 570 F.3d at 1100.

5 In the motion to dismiss, MindGeek argues that Pornhub is an ICS because the
6 definition includes websites where videos can be shared. (ECF No. 6 at 7 (citing *e.g., Doe*
7 *v. Reddit, Inc.*, 2021 WL 5860904, at *3 (C.D. Cal. Oct 7, 2021), *aff’d sub. nom., Does 1-*
8 *6 v. Reddit, Inc.*, 51 F.4th 1137, 1139 (9th Cir. 2022).) Ninth Circuit precedent establishes
9 that content creators are not entitled to immunity and ICSs “can be both a service provider
10 and a content provider.” *Fair Hous. Council v. Roommates.com, LLC*, 521 F.3d 1157,
11 1162 (9th Cir. 2008) (“If [a website provider] passively displays content that is created
12 entirely by third parties, then it is only a service provider with respect to that content. But
13 as to content that it creates itself, or is ‘responsible, in whole or in part’ for creating or
14 developing, the website is also a content provider.”). Here, the complaint specifically
15 alleges the content was created by Jeff Fenwick (Blocher’s former boyfriend), the persons
16 who held Blocher captive between April and June of 2020, and Ian Frankland (Blocher’s
17 current boyfriend). (ECF No. 1-1 at 7-8.) As the content in question is not alleged to have
18 been created by the website, the Court is fairly convinced that Pornhub meets the
19 standard for an ICS provider.

20 As to the second requirement for Section 230 immunity, MindGeek argues that a
21 claim premised on the upload of videos to a website would treat the defendant as the
22 publisher or speaker of third-party content. (*Id.*) Critically, “any activity that can be boiled
23 down to deciding whether to exclude material that third parties seek to post online is
24 perforce immune under section 230.” *Roommates.com*, 521 F.3d at 1170-71. In her
25 opposition to the motion to stay discovery, Blocher emphasizes the “need for additional
26 constraints on the requirements for verification, such as ‘a clear indication that all parties
27 are aware that there is a camera’ should be obvious” and “demand[s] reparations for
28 damages suffered due to the lack of regulation in the defendants corporate doctrine,

1 which allows for the profitability of abuse and exploitation.” (ECF No. 27 at 2.) From this
2 description, the Court is fairly convinced that Blocher’s claims do “boil[] down to deciding
3 whether to exclude material that third parties seek to post online” because she alleges
4 harm based on the failure of Pornhub to remove material uploaded by third parties.²

5 The final element for immunity under Section 230 asks whether the ICS provider
6 itself created or developed the specific content at issue. *Dyroff*, 934 F.3d at 1097; see
7 also *Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119, 1125 (9th Cir. 2003) (ICS is
8 immune unless it creates the “particular information” that provides the basis of the
9 plaintiff’s claim). As mentioned above, the complaint specifically alleges the content was
10 created by Jeff Fenwick, the persons who held Blocher captive between April and June
11 of 2020, and Ian Frankland. (ECF No. 1-1 at 7-8.) From these allegations, the Court is
12 fairly convinced that Pornhub did not create the content itself. Therefore, the Court is fairly
13 convinced that MindGeek or the entity that operates Pornhub would be entitled to
14 immunity under Section 230 because both entities are: (1) a provider or user of an ICS;
15 (2) whom Blocher seeks to treat, under a state law cause of action, as a publisher or
16 speaker; (3) of content provided by a third party. *Dyroff*, 934 F.3d at 1097; see also
17 *Barnes*, 570 F.3d at 1100.

18 Accordingly, the Court is fairly convinced that MindGeek’s motion to dismiss will
19 be granted for failure to state a claim upon which relief will be granted or, in the alternative,
20 granted because the claims are barred by Section 230. The undersigned recognizes the
21 District Court may disagree and find that dismissal is not proper. However, based on the
22 undersigned’s review of the motions, statutes, and caselaw, this Court is fairly convinced
23 that Defendants’ motions to dismiss are likely to be granted. Based on the above analysis

24
25 ² The second element for Section 230 immunity requires that the plaintiff seeks to
26 treat the defendant, *under a state law cause of action*, as a publisher or speaker. *Dyroff*,
27 934 F.3d at 1097. The only potential non-state law claim in the complaint relates to the
28 Thirteenth Amendment. As explained above, it is entirely unclear how Blocher seeks to
hold MindGeek liable for violating the Thirteenth Amendment. Therefore, the Court finds
it likely that the requirement that the cause of action be under a state law will not hinder
the application of Section 230 immunity.

1 and review, the Court finds that each of the motion to stay factors support staying
2 discovery and, therefore, MindGeek's motion to stay discovery should be granted.

3 **IV. CONCLUSION**

4 **IT IS THEREFORE ORDERED** that MindGeek's motion to stay discovery, (ECF
5 No. 18), is **GRANTED** and discovery is stayed in this case pending resolution of the
6 motion to dismiss.

7 **IT IS FURTHER ORDERED** that if the motion to dismiss is denied, the parties shall
8 file a Proposed Discovery Plan and Scheduling Order within 30 days of the entry of the
9 order denying the motion to dismiss.

10 **IT IS FURTHER ORDERED** that Blocher's motion to determine discovery plan,
11 (ECF No. 30), is **DENIED** as moot.

12 **IT IS SO ORDERED.**

13 **DATED:** August 4, 2023.



UNITED STATES MAGISTRATE JUDGE